IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.6.2007

CORAM

THE HON'BLE MR. JUSTICE S.MANIKUMAR

W.P.No.21736 of 2007 and
M.P.No.1 of 2007

Tvl.Colour Sense,
Rep. By its partner,
C.N.Satish Kumar,
No.59/32, Rama Street,
Nungambakkam, Chennai-600 034. ... Petitioner

vs

The Commercial Tax Officer,
Valluvar Kottam Assessment Circle,
621, Anna Salai,
Chennai-600 006. ... Respondent

Petition filed under Article 226 of the constitution of India to issue a writ of certiorari calling for the records on the file of the respondent pursuant to his proceedings in TNGST/1502559/2005-06 dated 30.3.2007 received on 24.5.2007 and quash the same.

For Petitioner ... Mr. S.Mohan

For Respondent ... Mr.R.Mahadevan AGP

ORDER

The petitioner has challenged the order of assessment order 2005-2006. The firm reported a total turn over of Rs.21,34,430.80 taxable at 3% and the assesse produced several records in support of the returns and requested the respondent to accept the same and finalize the assessment for 2005-2006.

2. The petitioner has further submitted that since they are in the business of printing, they exercised their option under Sec.3-G of the TNGST Act 1959 for compounded rate of tax at 3% and submitted a letter to the Assistant Commercial Tax Officer on 10.1.2005. It is the further case of the petitioner that for assessment year 2005-2006, they have submitted monthly returns before the respondent by

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giving details of turn over, with the payment of Sales-tax at 3% compounded for the entire sale value and the same was acknowledged by the respondent. Inspite of the option under section 3-G of the TNGST Act 1959, on the monthly returns submitted by the assesse, the respondent issued a pre-assessment notice and unilaterally proposed to assess the entire turnover relating to the sale of printed materials under section 3(1) of the TNGST Act instead of 3-G of the TNGST Act at the rate of 10% instead of compounded rate of 3% on a turn over of Rs.14,26,163/-. They further submitted that the petitioners are eligible for exemption in respect of turnover of Rs.6.06.205/- being sale of reading materials.

3. In reply to the above said notice, the petitioners have submitted their objections stating that they are in printing business and therefore, they have legal right to exercise option under section 3-G of the TNGST for payment of 3% compounded tax. The petitioners have further submitted that they bonafidely believed that the Assessing officer would have dropped the proceedings or in the alternative, would summon the petitioner, to clear all the misgivings in order to enable him to pass appropriate orders.

4. The petitioner has further submitted that without considering the reply in proper perspective, the respondent has simply rejected the contention of the petitioner giving a wrong interpretation to Sec.3-G of the TNGST Act 1959 and levied huge amount of tax and surcharge on the turnover of sale of printed materials and also imposed penalty.

5. Learned counsel for the petitioner submitted that the assessment order dated 30.3.2007 is contrary to the provisions of Sec.3-G of the TNGST Act 1959 and that the respondent has failed to consider that the petitioner is engaged in printing business.

6. Learned counsel for the petitioner further submitted that the impugned proceedings of the respondent was passed mechanically without reference to the meaning imparted in Sec.3-G of the TNGST Act. He further submitted that the dealer is engaged only in printing materials and therefore, the respondent is estopped in invoking some other provision to levy higher rate of tax.

7. Mr.R.Mahadevan, Learned Additional Government Pleader for the state was put on notice and heard. He submitted that as against the order of assessment, there is a remedy of filing a statutory appeal to the Appellate Assistant Commissioner, Commercial taxes,III, Chennai-108 and there are no extraordinary circumstances to invoke the jurisdiction of this Court. He further submitted that the Assessing Officer has rightly interpreted the words employed in Sec.3-G of TNGST Act and found that the petitioner is not entitled to pay tax at the compounded rate under Sec-3-G of TNGST Act.

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8. Heard the counsel appearing for the parties and perused the materials available on record.

Section 3-G reads as follows:

"Payment of tax at compounded rate by printers(1) Notwithstanding anything contained in sub-sec.(2) of Section 3 of Section 3-B, every dealer who carries on the business of printing may, at his option, instead of paying tax in accordance with sub-section (2) of Section 3 or Section 3-B pay tax at the rate of three per cent on the total turnover;

(2) Every dealer who opts for payment of tax under sub-section(1), shall apply to the assessing authority in such form as may be prescribed on or before the 30th day of April of the year or within thirty days of commencement of business, as the case may be and shall pay tax along with such return, within such period and in such manner, as may be prescribed. Provided that the option under this sub-section for the year commencing on the 1st day of April 2002 shall be exercised on or before the 31st day of July 2002

(3) The option so exercised under sub-section (2) shall be final for that year and shall continue for subsequent years and shall continue for subsequent years until the dealer withdraw his option in writing on or before the 30th day of April of the subsequent year"

9. As per 3-G of the TNGST Act, every dealer who carries on business of printing may at his option, instead of paying tax in accordance with sub section (2) of section 3 or section 3-B to pay tax at the rate of 3% on the total turn over. It is the case of the petitioner that they get raw materials for printing on 'job work basis' and sell this printed materials both within the State and interstate. On the basis of available materials, the Assessing Officer has found that the assesse does not own any printing press for printing the goods which were sold in the year 2005-2006, and that they are not engaged in printing business, but they are in the business of only selling printed materials. The Assessing Officer has also observed that the assessees, who themselves carry on the business of printing alone are eligible to claim the benefit of Sec.3-G of the TNGST Act.

10. There is certainly a lot of difference in Business of printing and selling printed materials. If the contention of the petitioner is to be accepted, then all the dealers dealing with printed materials, would have the benefit under Section 3-G of the Act. When the language of the legislation is clear, it is not permissible to give a different meaning and interpretation. Writ jurisdiction cannot be invoked to adjudicate the questions of fact as

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to whether the assesse was engaged in the business of printing to avail the benefit under sec 3-G of the TNGST Act. Further, if the petitioner is aggrieved by the finding of fact, statutory remedy is available under section 31 of the TNGST Act to the Appellate Assistant Commissioner, Commercial taxes III, Chennai-108. Writ remedy is not to bye pass the statutory remedy, unless it is shown that the impugned order is per se without jurisdiction and patently illegal, Writ Petition is not maintainable. In the instant case, the Assessing Officer has passed the impugned order, based on the materials and, levied a higher rate of tax and penalty. The said order cannot be termed as without jurisdiction. Inview of the above, this Court is of the considered view that the petitioner has not made out any strong case for entertaining the writ petition under Article 226 of the Constitution of India.

In the result, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

The Commercial Tax Officer,
Valluvar Kottam Assessment Circle,
621, Anna Salai,
Chennai-600 006.

W.P.No.21736 of 2007

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